No. 50819-2-II

IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

Thurston County Case No. 17-2-04477-3

TIM EYMAN, Appellant,

v.

ROBERT FERGUSON, in his capacity as
Attorney General of the State of Washington, Respondent

APPELLANT'S BRIEF ON APPEAL

Stephen Pidgeon
Attorney at Law
1523 – 132nd Street SE
Suite C-350
Everett, Washington 98208
(425)299-9012

Attorney for Appellant

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INTRODUCTION

Over a period of several years, the public via the process of three initiatives (Initiative 960 (2007); Initiative 1053 (2010); Initiative 1185 (2012), demanded an advisory vote on any tax increase enacted by the legislature. Due to the voters' approval of the first initiative, the voters enacted RCW 43.135.041 which requires the Attorney General to seek an advisory vote for each legislative action raising taxes.

This year, Engrossed House Bill 2163 (CP 17-66) was enacted and signed by the Governor into law, which includes three different tax increases. The Attorney General has taken the position that these three tax increases require only one advisory vote. Appellant Eyman ("Eyman") approached the Attorney General and alerted them on July 27 that three advisory votes were required under RCW 43.135.041– one advisory vote for each of the three increases in EHB 2163, and was rebuffed.

The Attorney General issued a short description for one advisory vote for the three tax increases on August 3, 2017, and Eyman sued on August 4, 2017. Eyman sought Declaratory Judgment asking the trial court to declare that the Attorney General's determination to seek one advisory vote on three tax increases was unlawful. The trial court did not reach the merits of Eyman's Petition, instead finding that the petition was untimely. (CP __).

ASSIGNMENTS OF ERROR

The trial court erred in finding that Eyman's Petition was untimely. No statute of limitations is applicable to the bringing of a Declaratory Judgment action; rather, such an action is limited only by equitable doctrines such as mootness, laches, or waiver. None of these doctrines are applicable here, and the trial court has erred in dismissing the Petition on the basis of untimeliness.

ISSUES ON APPEAL

Eyman asserts the following issues on appeal:

Whether the trial court erred by finding that Eyman's Petition was time barred and untimely, given the date of filing, when no statute of limitations applies, and when there is no basis in equity to support the court's conclusion;

Whether the doctrine of mootness now prevents the remedy sought by Eyman.

STATEMENT OF THE CASE

Eyman seeks Declaratory Judgment that RCW 43.135.041 requires the attorney general to provide a separate advisory vote for each tax increase set forth in Engrossed House Bill 2163.

ARGUMENT

Procedural History

The ruling of the trial court at issue here, upon which the final order dismissing the case is as follows:

> This case begins with a threshold issue that is in essence two threshold issues. One is the nature and form of the action and whether or not it is satisfactory to obtain judicial review seeking the relief that Mr. Eyman seeks. The second is the timing.
>
> As to the first, whether or not this type of action and this type of relief is appropriate for a Uniform Declaratory Judgment Act action, I find that the manner in which this action was initiated was sufficient to bring these issues before the Court. I do not need to find whether or not this needs to be a Uniform Declaratory Judgment Act action or whether it should be construed as a writ of mandamus given the fact that the identity of the parties involved are sufficient for either one, given that the action was against Attorney General Ferguson, and given that the relief that was requested was the relief that would be needed in this case, particularly given that we have a petitioner who is pro se and the liberal rules that are applied in that context. I do not find that the

nature of this action is a bar to this Court reaching the underlying issue.

That leaves the second threshold issue, however, and I do find that that is dispositive in this case. I do find that I cannot reach the underlying issue given the time concerns in this case. I recognize that that seems very harsh to a lay person because these are very short turnarounds. I also recognize that in this case the turnarounds were incredibly short such that if this action were filed even a day earlier I would have considered it because that would have been five days following when the ball started rolling so to speak on the 27th.

The hypothetical I gave to Ms. Castillo regarding whether or not this all happened in a single day, if this would be a bar to Mr. Eyman receiving any relief, I would not have found that to be a bar because I believe that there needs to be sufficient time for the public and for our citizenry to identify issues and seek judicial relief.

That being said, **there is a five-day clock that starts when the identification of the number of the advisory votes is given to the Attorney General's Office.** [Bold added]. Even if the Court simply looked at that five-day period and not when the short

descriptions were filed, this action was initiated outside of that timeframe. Those timeframes are important in our system because of the quick turnarounds given the timing of votes, the finalization of ballots and pamphlets, and the tremendous amount of work that our Secretary of State and other state agencies need to engage in to make these things all happen, particularly given the large population of voters that we have overseas at our military installations. The timing is very important. It can seem short, it can seem harsh, but, again, it isn't even this Court's capacity or role to determine whether or not they make sense because that is the law.

Thus, I find that there is a time bar to this action [bold added] that prevents me from reaching the underlying issues this year in this case as to whether or not this should have been one or three advisory votes. Verbatim Report of Proceedings (CP 183-185).

On Thursday, July 27, 2017, the Attorney General sent a letter to the Secretary of State identifying the bills that contained tax increases subject to advisory votes -- they sent the letter five days earlier than the August 1 deadline set forth in the statute (RCW 43.135.041). (CP 107).

On Thursday, July 27, 2017, Petitioner had an email exchange with Rebecca Glasgow with the Attorney General's office and argued that they were construing the law incorrectly. His effort to resolve it without litigation was rebuffed. (CP 12-13).

On Thursday, July 27, 2017, the Secretary of State sent a letter to the Attorney General and identified the advisory vote numbers (16, 17, & 18). (CP 107).

On Thursday, August 3, 2017, the Attorney General sent the Secretary of State the short descriptions for the advisory votes. (CP 108-120).

On Friday, August 4, 2017, Petitioner filed the Petition for Declaratory Judgment, (CP 4-9) which asked the trial court to construe RCW 43.135.041 under the Uniform Declaratory Judgment Act as meaning that the Attorney General was required to file three advisory votes in respect of EHB 2163.

On August 9, 2017, the Secretary of State alerted the County Auditors that this case was pending and to not print until this case was resolved. (CP 12-13).

On August 14, 2017, Petitioner was sent the short description of the advisory vote. (CP 12-13).

On August 16, 2017, the Secretary of State reminded the County Auditors that this case was pending, and not to print until the case was resolved. While the Secretary was expecting the case to be finished by August 25, 2017, the Declaration of Eyman indicates that a rigid timeline does not arrive until September 1, 2017. (CP 12-13).

On Friday, August 14. 2017, a Hearing was held before Judge Lanese to determine a hearing date, and August 21, 2017 was set. The Attorney General thereafter sent Petitioner the short descriptions for the advisory votes that were sent to the Secretary of State on August 3. (CP 108-120).

On Tuesday, August 18, 2017, Tim Eyman filed a second declaration. (CP 76-85).

On Thursday, August 19, 2017, the Attorney General filed a response. (CP 86-98).

On Friday, August 20, 2017, Petitioner filed a Strict Reply. (CP 122-127).

On Monday, August 21, 2017, Judge Lanese denied Eyman's Petition finding that he failed to challenge in a reasonable time. (CP 132-133).

On Monday, August 21, 2017, Petitioner filed a Notice of Appeal with the Supreme Court and a request for accelerated review. (CP 129-130).

On Wednesday, August 23, 2017, Petitioner filed a motion for reconsideration with the trial court. (CP 189-248).

On August 30, 2017, the Supreme Court treated Eyman's Motion for Direct Review as a Statement of Grounds for Direct Review, and indicated that the Court would consider whether to grant direct accelerated review at the En Banc conference on September 7, 2017. (CP 143).

On August 31, 2017, the Attorney General filed its Answer in the Supreme Court.

On September 7, 2017, the Supreme Court ordered that the case be transferred to Division II, of the Court of Appeals. (CP 143).

Points and Authorities

The trial court on oral argument, determined that Petitioner's Petition was untimely, preventing the court from reaching the merits of the case, which the court did find were properly before the court. Verbatim Report of Proceedings, (CP 183). The trial court imposed an unwarranted standard and erred in this decision. For instance, five days are allowed to respond to a motion, CR 6(d); twenty days are allowed to answer a lawsuit (60 if defendant out of state), CR 12(a)(1); twenty-eight days are allowed

to respond to a motion for summary judgment, CR 56(c); thirty days are allowed to appeal, RAP 5.2; and one year is allowed for reconsideration, CR 60(b). Yet the trial court found that this Petition – being brought the day after the Attorney General sent the Secretary of State the short descriptions for the advisory votes – was untimely. There is no statutory authority for such a conclusion.

While RCW 29A.72.283 sets a time limit on the Attorney General, and declares that the short description is not subject to appeal, this statute in inapplicable to the petition here. In fact, there is no statute of repose in respect of bringing a Declaratory Judgment action on the issue of whether RCW 43.135.041 requires the Attorney General to file separate advisory votes on each tax revenue increase found in EHB 2163. The only thing limiting the Petition would be equitable doctrines of repose, such as mootness, waiver, or laches.

Under the UDJA, Petitioner was required to exhaust remedies or alleging futility before bringing this action. He did so in a prompt (the same day) and timely (the same day) manner. Although the issue was futile, Petitioner pleaded exhaustion. This issue continues to be ripe for adjudication. And in this, it is not legally moot.

It would be difficult and straining to allege laches and waiver here, where Petitioner contacted the Attorney General on the same day in which

the Attorney General made a determination that only one advisory vote on three tax revenue increases would be required in respect of EHB 2163, or that somehow Petitioner was dilatory by filing his lawsuit one day after the Attorney General sent the Secretary of State the short description.

The court can only look to timeliness which may be blocked pursuant to the doctrine of mootness. Where the court can no longer provide an effective remedy, an issue becomes moot. *In re Cross,* 99 Wn.2d 373, 377, 662 P.2d 828 (1983). A recognized exception to this general rule lies within the court's discretion when "matters of continuing and substantial public interest are involved." *Sorenson v. Bellingham,* 80 Wn.2d 547, 558, 496 P.2d 512 (1972). The court has adopted criteria to consider in deciding whether a matter, though moot, is of continuing and substantial public interest and thus reviewable. See *Sorenson v. Bellingham, supra* (constitutional challenge to ordinance requiring property ownership as a qualification for certain elected offices). The three factors considered essential are: (1) whether the issue is of a public or private nature; (2) whether an authoritative determination is desirable to provide future guidance to public officers; and (3) whether the issue is likely to recur. *In re Cross, supra* at 377 (citing *Sorenson v. Bellingham,* at 558). Arguably a fourth factor exists, that being the level of genuine adverseness and the quality of advocacy of the issues. *See Washington*

State Comm'l Passenger Fishing Vessel Ass'n v. Tollefson, 87 Wn.2d 417, 419, 553 P.2d 113 (1976) (mootness exception not used though applicable because issues inadequately presented); *Everett v. Van Dyke,* 18 Wn. App. 704, 705-06, 571 P.2d 952 (1977) (mootness exception not used though applicable because parties not genuinely adverse). *Cf. Orwick v. Seattle,* 103 Wn.2d 249, 253, 692 P.2d 793 (1984) (mootness exception not used because case became moot before trial). But *cf. Seattle v. State,* 100 Wn.2d 232, 250, 668 P.2d 1266 (1983) (Rosellini, J., dissenting) (asserting that a different fourth factor exists; the likelihood issues in short-lived controversies will escape review).

As a consequence, even if this issue were moot, this Court would still have jurisdiction to hear this matter. However, as the facts before the Court illustrate, the matter is not moot, and not subject to any other equitable doctrine of repose.

Declaratory Judgment is Appropriate

The Uniform Declaratory Judgment Act (UDJA) RCW 7.24.020 states: "A person … whose rights … are affected by a statute … may have determined any question of construction … arising under the … statute … and obtain a declaration of rights."

According to Black's Law Dictionary, the word "construction" means "the process, or the art, of determining the sense, real meaning, or

proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, or oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision. Strict construction is construction of a statute or other instrument according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations or implications. *Paving Co. v. Watt.* 51 La. Ann. 1345, 20 South. 70: *Stanyan v. Peterborough,* 69 N. H. 372, 46 Atl. 191. Liberal construction, on the other hand, expands the meaning of the statute to meet cases which are clearly within the spirit or reason of the law, or within the evil which it was designed to remedy, provided such an interpretation is not inconsistent with the language used; it resolves all reasonable doubts in favor of the applicability of the statute to the particular case. Black. Interp. Laws, 282: *Lawrence v. McCalmont,* 2 How. 449. 11 L. Ed. 326; *In re Johnson's Estate,* 98 Cal. 531, 33 Pac. 400, 21 L. R. A. 3S0; *Shorey v. Wyckoff,* 1 Wash. T. 351Law Dictionary:

The question before the Court is whether RCW 43.135.041 requires in its construction that the attorney general provide a separate

advisory vote for each tax increase included in Engrossed House Bill 2163.

EHB 2163 (CP 17-66) articulates three revenue increases. RCW 43.135.041 provides that "if legislative action raising taxes as defined by RCW 43.135.034 is blocked from a public vote or is not referred to the people by a referendum petition found to be sufficient under RCW 29A.72.250," that "a measure for an advisory vote of the people is required and shall be placed on the next general election ballot under this chapter.

The Attorney General is bringing an advisory vote, yet raises issue with how section (b) of this statute should be constructed. The statute, in operative part at issue here, provides that "(b) If legislative action raising taxes enacted after July 1, 2011, involves more than one revenue source, each tax being increased shall be subject to a separate measure for an advisory vote of the people under the requirements of this chapter." RCW 43.135.041(b). Petitioner asks this Court on the set of facts before the Court as set forth in EHB 2163, exactly what "one revenue source" means, and asks this Court to declare it in judgment as a matter of public record.

The Attorney General, in its defense on this petition, also has elected to redefine what is a tax increase for purposes of this statute, which now apparently requires a further declaration by this Court. See CR 15(b).

In response to the Attorney General's position, the Court should consider the plain language of the statute involved:

RCW 43.135.034 (b) provides as follows: For the purposes of this chapter, "raises taxes" means any action or combination of actions by the state legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund. EHB 2163. There are three tax increases in EHB 2163 and each one increases state tax revenue and that fact has already been calculated, acknowledged, and agreed to: $565 million over the next 10 years. By the strict definition of a tax increase provided in the statute (buttressed by a previous ruling by the Lieutenant Governor reprinted at the bottom of page 21 of this brief), there are three tax increases in the bill.

The Court's fundamental objective in construing a statute on declaratory judgment is to ascertain and carry out the Legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *State v. J.M.*, 144 Wash.2d at 480, 28 P.3d 720. This the trial court did not do. However, descriptions of the "plain meaning" rule have not been uniform in this court's cases. In some cases, the court has said that "[i]n a[] unambiguous statute, a word is given its plain and obvious meaning." *Addleman v. Bd. of Prison Terms & Paroles*, 107 Wash.2d 503, 509, 730

P.2d 1327 (1986); *see Young v. Estate of Snell*, 134 Wash.2d 267, 279, 948 P.2d 1291 (1997) (the meaning of a statute must be derived from the wording of the statute itself where the statutory language is plain and unambiguous); *Waggoner v. Ace Hardware Corp.,* 134 Wash.2d 748, 752, 953 P.2d 88 (1998) (*same*); *State ex rel. Royal v. Bd. of Yakima County Comm'rs,* 123 Wash.2d 451, 458, 869 P.2d 56 (1994) (same).

If the meaning of the language is ambiguous or unclear, this line of cases directs that examining the statute as a whole, or a statutory scheme as a whole, is then appropriate as part of the inquiry into what the Legislature intended. *See, e.g., Addleman,* 107 Wash.2d at 509, 730 P.2d 1327; *Sebastian v. Dep't of Labor & Indus.*, 142 Wash.2d 280, 285, 12 P.3d 594 (2000). Thus, some cases indicate that consideration of a statutory scheme as a whole, or related statutes, is part of the inquiry into legislative intent only if a court determines that the plain meaning cannot be derived from the statutory provision at issue and ambiguity necessitates further inquiry.

Other cases indicate, however, that under the "plain meaning" rule, examination of the statute in which the provision at issue is found, as well as related statutes or other provisions of the same act in which the provision is found, is appropriate as part of the determination whether a plain meaning can be ascertained. *In Estate of Lyons v. Sorenson,* 83

Wash.2d 105, 108, 515 P.2d 1293 (1973), for example, the court said that legislative intent is to be determined from what the Legislature said, if possible. The court then determined legislative intent from the "plain and unambiguous" language of a statute "in the context of the entire act" in which it appeared. Id.; *see also C.J.C. v. Corp. of the Catholic Bishop of Yakima,* 138 Wash.2d 699, 708-09, 985 P.2d 262 (1999) (where statutory language is clear and unambiguous, its meaning is derived from its language alone; court construes an act as a whole, giving effect to all the language used, with related statutory provisions interpreted in relation to one another); *ITT Rayonier, Inc. v. Dalman,* 122 Wash.2d 801, 807, 863 P.2d 64 (1993) (a term in a regulation should not be read in isolation but rather within the context of the regulatory and statutory scheme as a whole; statutory provisions must be read in their entirety and construed together, not by piecemeal).

In the past, the plain meaning rule rested on theories of language and meaning, now discredited, which held that words have inherent or fixed meanings. These theories are unnecessary to the plain meaning rule, however, if the rule is interpreted to direct a court to construe and apply words according to the meaning that they are ordinarily given, taking into account the statutory context, basic rules of grammar, and any special usages stated by the legislature on the face of the statute. So defined, the

plain meaning rule requires courts to consider legislative purposes or policies appearing on the face of the statute as part of the statute's context.

In addition, background facts of which judicial notice can be taken are properly considered as part of the statute's context because presumably the legislature also was familiar with them when it passed the statute. Reference to a statute's context to determine its plain meaning also includes examining closely related statutes, because legislators enact legislation in light of existing statutes. 2A Norman J. Singer, STATUTES AND STATUTORY CONSTRUCTION § 48A:16, at 809-10 (6th ed. 2000) (extracts from R. Randall Kelso & C. Kevin Kelso, APPEALS IN FEDERAL COURTS BY PROSECUTING ENTITIES OTHER THAN THE UNITED STATES: THE PLAIN MEANING RULE REVISITED, 33 Hastings L.J. 187 (1981)).

Under this second approach, the plain meaning is still derived from what the Legislature has said in its enactments, but that meaning is discerned from all that the Legislature has said in the statute and related statutes which disclose legislative intent about the provision in question. If, after this inquiry, the statute remains susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Cockle v. Dep't of Labor & Indus.*, 142 Wash.2d 801, 808, 16 P.3d 583 (2001); *Timberline*

Air Serv., Inc. v. Bell Helicopter-Textron, Inc., 125 Wash.2d 305, 312, 884 P.2d 920 (1994).

In furtherance of the second tier analysis on this issue and regarding the strict definition of a tax increase in RCW 43.135.034, on March 7th, 2009, during a Senate Floor debate on a bill (2SSB 5809), Senator Janea Holmquist asked the Lieutenant Governor Brad Owen to rule on the definition of raises taxes in RCW 43.135.034. Here is an excerpt from his ruling:

> Lt. Gov. Owen: In ruling upon the point of order raised by Senator Holmquist as to the application of Initiative 960 to Second Substitute Senate Bill 5809, the President finds and rules as follows. The President begins by reminding the body that neither he nor they adopted the law that was enacted by I-960. I-960 was drafted with very strict parameters and the President, like the members of this august body, is charged with enforcing its strictures. It may be that the strict language of 960 results in harsh and undesirable consequences but this is a result of the strict language of the initiative, not the judgement of the President. … For this reason, the President believes this second action is more properly characterized as a tax increase … For these reasons, Senator Holmquist's point is well taken. [Underline added].

The Attorney General's decision to combine multiple revenue sources into one advisory vote conflicts with the legislative intent of the voters in Initiative 960 and is contrary to the plain, every day meaning of revenue source. The average person would not consider new revenues from taxes on bottled water, on self-produced fuel, and on internet sales to be the same revenue source. The average voter would not know Title 82

from Title 83 and 84. That voter would want the opportunity to vote on each tax increase individually. As the Attorney General cited in response, the intent section of Initiative 960 read, in part: "… the legislature should be aware of the voters' view of individual tax increases." That will only happen in this case if the court examines the construction of these statutes.

The Issue is Not Moot

The Attorney General has previously demanded that the Court dismiss this petition on the basis that it is moot. The Attorney General apparently agrees with Justice Johnson, who wrote in *Mukilteo Citizens v. City of Mukilteo,* 272 P. 3d 227, 234 (2012) as follows:

> This appeal asks us to consider a pre-election challenge to city of Mukilteo Proposition 1 (Prop 1), an advisory vote opposing automated traffic safety cameras ("red-light cameras") in that city. Prop 1 was placed on the November 2010 general election ballot and endorsed by over 70 percent of Mukilteo voters. The Mukilteo City Council then voted to repeal the red-light cameras ordinance. The parties do not dispute the status of the law in Mukilteo; red-light cameras are no longer authorized. The majority does not claim anything unlawful was done here. The people exercised their right to petition. The city council put a relevant advisory issue on the ballot. The voters expressed a strong position and the city

council repealed a disfavored ordinance. As there is no justiciable controversy for us to resolve, the appeal is moot.

The Supreme Court, by the concurring votes of Justices Susan Owens, Mary E. Fairhurst, Debra L. Stephens and Charles K. Wiggins, overruled Justice Johnson and ruled on the measure even though it had been placed on the ballot and was endorsed by a vote of the people of Mukilteo.

Even in the delay in hearing this appeal, the issues are not moot. The Court may reach the merits of a trial court's decision to deny declaratory relief if there is a "justiciable controversy" for the court to resolve pursuant to chapter 7.24 RCW. *Walker v. Munro,* 124 Wash.2d 402, 411, 879 P.2d 920 (1994*); Fed. Way Sch. Dist. No. 210 v. State*, 167 Wash.2d 514, 529, 219 P.3d 941 (2009). In this case, a justiciable controversy exists whether or not the advisory vote appears on the ballot as proposed by the Attorney General, because the question of whether the Attorney General has acted in violation of RCW 43.135.041 remains viable and ripe for judicial determination.

This Court has defined "justiciable controversy" as:

(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing

interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive. *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wash.2d 811, 815, 514 P.2d 137 (1973).

The justiciability of any particular preelection claim "is largely a function of the type of review sought." *Coppernoll v. Reed*, 155 Wash.2d at 300, 119 P.3d 318. Just as subject matter challenges do not raise concerns regarding justiciability because postelection events will not further sharpen the issue, so this challenge remains justiciable, because it too raises an issue that postelection events will not further sharpen. *Id.* at 299, 119 P.3d 318.

Here, there is an actual, present and existing dispute. RCW 43.135.041 requires the Attorney General to provide the voting public with an advisory vote for each tax revenue increase enacted by the legislature. The language of the statute is unambiguous. This issue is whether the Attorney General has met the conditions of this statute or is acting in violation of this statute. Such a question could be raised again even after the election. Either the Attorney General is compliant with the statute or in violation thereof. An election will not cure the issue.

There is a substantial conflict here between the thrice-expressed will of the people of Washington to have an advisory vote on each tax

increase, and the Attorney General who has determined that if all three tax increases are contained in the same bill, only one vote is necessary. Mr. Eyman has asked the trial court to determine exactly what the statute required, and the court declined to make a decision. The controversy therefore remains, and will remain even after the election.

The Uniform Declaratory Judgments Act, RCW 7.24.010 et seq., is designed "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered." RCW 7.24.120.

"A declaratory judgment is used to determine questions of construction or validity of a statute or ordinance." *City of Fed. Way v. King Cnty.*, 62 Wn. App. 530, 534-35 (1991); *Seattle-King Cnty. Council of Camp Fire v. State Dep't of Revenue,* 105 Wn.2d 55 (1985); *Ayers v. City of Tacoma,* 6 Wn.2d 545 (1940).

Courts routinely rule on the validity of legislation proposed or adopted by initiative in declaratory judgment proceedings. *See, e.g., Am. Traffic Solutions, Inc. v. City of Bellingham,* 163 Wn. App. 427, 433-34 (2011) (reversing denial of declaratory judgment for company challenging local initiative as exceeding initiative power), *review denied,* 173 Wn.2d 1029 (2012); *King Cnty. v. Taxpayers of King Cnty.*, 133 Wn.2d 584, 608, 612 (1997) (affirming declaratory judgment invalidating local initiative

because, among other things, initiative would have conflicted with state law); *Seattle Bldg. & Constr. Trades Council v. City of Seattle*, 94 Wn.2d 740, 747-49 (1980) (affirming declaratory judgment for private trade association challenging local initiative as exceeding initiative power); *Ford v. Logan*, 79 Wn.2d 147, 155-57 (1971) (affirming declaration invalidating local initiative because it conflicted with the state constitution).

Declaratory judgment remains the best course of action to determine what the statute means, and the facts before the Court in this immediate case are ripe for adjudication. The actions of the Attorney General to lump three tax increases into a single advisory vote amounts to a direct challenge to the plain language of RCW 43.135.041.

Finding this issue to be moot at this juncture would be inconsistent with prior decisions in the not-so-distant past. Moreover, even if the question of whether the Attorney General is in violation of RCW 43.135.041 is debatable, the Court should address the issues presented in this appeal, because they involve significant and continuing matters of public importance that merit judicial resolution. *See Farris v. Munro*, 99 Wash.2d 326, 330, 662 P.2d 821 (1983) (addressing challenge to state lottery even though plaintiff lacked standing); *see also Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1*, 77 Wash.2d 94, 96, 459 P.2d 633 (1969).

CONCLUSION

For these reasons, Petitioner again asks this Court to declare that RCW 43.135.041 requires the attorney general to provide a separate advisory vote for each tax increase included in Engrossed House Bill 2163; and that RCW 43.135.041 defines the revenue increases described and enacted in Engrossed House Bill 2163 to be tax increases.

Respectfully submitted this 22nd day of October, 2017.

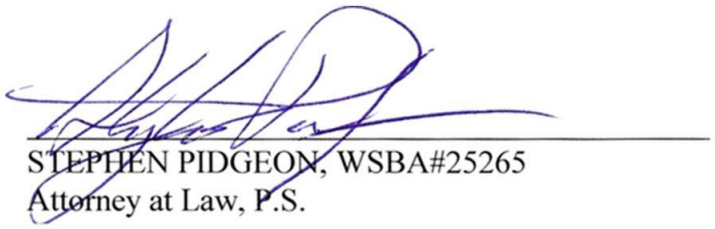
STEPHEN PIDGEON, WSBA#25265
Attorney at Law, P.S.
1523 – 132nd Street SE, Suite C-350
Everett, Washington 98208
(425)299-9012
Attorney for Tim Eyman, Appellant

CERTIFICATE OF SERVICE

The undersigned now certifies that the foregoing was served upon the following by electronic service pursuant to a prior understanding,

Rebecca R. Glasgow, WSBA #32886
Callie A. Castillo, WSBA #38214
Deputies Solicitors General
1125 Washington Street SE PO Box 40100
Olympia, WA 98504-0100

this 22nd day of October, 2017.



STEPHEN PIDGEON, WSBA#25265
Attorney at Law, P.S.

STEPHEN PIDGEON, ATTORNEY AT LAW

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